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17 May 2006

**VIA ELECTRONIC FILING AND FIRST CLASS U.S. MAIL**

Honorable Magistrate John D. Roberts  
United States District Court  
222 W. 7<sup>th</sup> Avenue. No. 46  
Anchorage, AK 99513

Re: *CitiCapital Commercial Corp. v. Woodbine Alaska Fish Co., et al.*  
Case No. A-04-0147  
Our File No.: 2344

Dear Judge Roberts:

We are writing this letter because we have taken the default of opposing counsel for failing to file an answer to the counter claim. The answer was due in 20 days and Mark Manning was present in open court when we had the hearing setting dates.

On the one hand, we wish to zealously represent our client's interests, and we saw the minute order from the Court informing us that "Where the time to answer has expired, Counterclaimants shall require Counterdefendant's answer immediately or apply for default within 20 days from the date of this minute order". We took CitiCapital's default. In accord is the Ninth Circuit Court of appeals case, *Hawaii Carpenters Trust Funds v. Stone* (9th Cir. 1986) 794 F.2d 508, 512, which states that if a defendant fails to respond as required by law, it is not entitled to any further notice before entry of its default. This being the case, we took CitiCapital's default without further notice beyond the Court's minute order. Mr. Manning never asked for an extension and has never provided us with a reason as to why he did not file a timely answer.

Mr. Manning has asked us to set aside the default, and has made it sound like we are wrong for following the law, the Court's order, and asserting our client's rights, without one iota of fault on his part or apology. From the beginning of this case we have had inadequate notice. Fifteen months ago, the situation was reversed, and Citicapital knew that we represented Woodbine, and was in communication with us the day before going *ex parte* to appoint and seek a survey of the vessel. Notice was mailed and not received until weeks later even though we were in daily communication with Mr. Manning by email and telephone. Prior to e-filing, Mr. Manning would not fax us documents based upon an undue burden to his office, and on many accusations did not

*Birnberg & Associates*

Judge Roberts  
17 May 2006  
Page 2 of 3

get notice. Since the Court's minute order gave us the option to contact Mr. Manning OR take CitiCapital's default, we opted to take his default.

We are guests in this Court, and are cognizant of the Alaska state rules regarding such circumstances. We do not wish to demonstrate any disrespect to the Court or Mr. Manning, yet wish to assert our client's rights. It does not appear to be in our client's best interest to set aside the default.

As such we write this letter, as we do not wish to put Mr. Manning to the trouble of writing a motion to set aside the default, yet, we are supported by case law and the court's minute order in taking the default.

This Court has heard enough of the accusations and the history of the parties' disharmonious relations. Likewise, this Court has seen the numerous times Citicapital has requested additional time, or other special accommodation, and CitiCapital's actions speak for themselves. We simply wish to impress upon the Court that our client does not wish to extend any courtesy and set aside the default, as there has been a consistent lack of courtesy shown to our client by Citicapital. However, if the Court believes that it is a waste of time and resources to brief the matter, and that it will likely grant a motion to set aside, then counsel will so stipulate.

Respectfully submitted,  
BIRNBERG & ASSOCIATES

/s/ Cory A. Birnberg

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Judge Roberts  
17 May 2006  
Page 3 of 3

Certificate of service

The undersigned hereby certifies that on this 17th day of May 2006, a true and correct copy of Letter regarding Default was served electronically on:

Mark C. Manning  
431 West 7th Avenue, Suite 204  
Anchorage, AK 99501-3583  
Facsimile: 907-278-1169

BIRNBERG & ASSOCIATES

By: \_\_\_s/Cory Birnberg\_\_\_

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